

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of Water)	ORDER
Administration of the)	
Republican River Basin,)	COMPACT CALL YEAR
)	IN EFFECT
Water Division 1-B.)	

This matter came on for consideration before the Department of Natural Resources ("Department") upon its own motion. The Director finds and orders as follows:

1. The Department is an executive agency that has been granted exclusive and original jurisdiction under Neb. Rev. Stat. § 61-206 over all matters pertaining to water rights for irrigation, power, or other useful purposes.
2. On July 16, 2004, the Department designated the Republican River Basin as fully appropriated pursuant to Neb. Rev. Stat. § 46-714.
3. As a result of this designation, Neb. Rev. Stat. § 46-715 required the Department to jointly develop Integrated Management Plans (collectively, "Basin IMPs") with the Natural Resources Districts ("NRDs") encompassing the Republican River Basin including the Upper Republican, Middle Republican, Lower Republican, and Tri-Basin NRDs (collectively, "Basin NRDs"). Neb. Rev. Stat. §§ 46-715 through 46-718.
4. Neb. Rev. Stat. § 46-715(4)(b) requires that the groundwater and surface water controls adopted in an IMP shall be "...sufficient to ensure that the [State of Nebraska] will remain in compliance with applicable state and federal laws and with any applicable interstate water compact or decree or other formal state contract or agreement pertaining to surface water or ground water use or supplies."
5. Neb. Rev. Stat. § 46-715(6) requires that "...in any river basin, subbasin, or reach that is designated as fully appropriated or overappropriated and whenever necessary to ensure that the [State of Nebraska] is in compliance with an interstate compact or decree or formal state contract or agreement, the Department, in consultation with the affected Basin NRDs, shall forecast on an annual basis the maximum amount of water that may be available from streamflow for beneficial use in the short term and long term in order to comply with the requirement of § 46-715(4)(b)."
6. To ensure compliance with the Republican River Compact ("Compact") and Final Settlement Stipulation ("FSS"), the Basin IMPs contain surface water controls to be administered by the Department as provided in Neb. Rev. Stat. §§ 46-715 and 46-716.

7. Based on the forecast procedures set forth in each of the Basin IMPs, the Department has determined that 2023 is a Compact Call Year. This Compact Call Year will require the State of Nebraska to comply with the terms of the Compact Administration's "Resolution Approving Long-Term Agreements Related to the Operation of Harlan County Lake for Compact Call Years" ("RRCA Resolution"), dated August 24, 2016. Compliance with the RRCA Resolution constitutes compliance with the FSS and the Compact.
8. The Compact, enacted by Congress in 1943, and ratified by the legislatures of the three signatory states of Colorado, Kansas, and Nebraska, allocates the Republican River Basin's annual water supply among the three states.
9. The annual volume of water to which Nebraska has legal rights can vary depending on the applicable Compact accounting metric (accounting metrics can modify the accounting point and averaging period) and is not known in the course of any given year, until after that year has concluded and the Republican River Compact Administration ("RRCA") has completed the annual accounting. Therefore, all persons using water in the Nebraska portion of the Republican River Basin, are advised that their legal rights to store, access, and use water in Nebraska are subject to the Compact Call until the Department has confirmed that RRCA annual accounting indicates that Nebraska has remained in compliance with the Compact and the RRCA Resolution. A copy of the Compact is located at Neb. Rev. Stat. § A1-106.
10. During Compact Call Years, as determined from the procedures and analysis set forth in the most recently adopted Basin IMPs, the Department will regulate and administer surface water in the Republican River Basin as necessary to ensure Compact compliance. During Compact Call Years, the Department will issue a Compact Call on the Republican River at Hardy or Guide Rock to carry out water rights administration for the Compact in a manner consistent with Nebraska law and the Basin IMPs.
11. The Department will issue the necessary closing notices on natural flow and storage permits in the Republican River Basin until such time as the Department, in consultation with the Basin NRDs, determines that administration is no longer needed to ensure Compact compliance.

It is therefore ORDERED:

That a COMPACT CALL YEAR is in effect. Through the course of the year (2023), the necessary natural flow and storage appropriations in the Republican River Basin upstream of Hardy, Nebraska will be closed at such times that the Department determines that closure is necessary to ensure Compact compliance, including effectuating terms of the RRCA Resolution.

It is further ORDERED:

That when determined to be necessary, closing notices shall be sent, along with a copy of this Order, to the necessary surface water appropriators requiring administration. Such closing notices will include, as appropriate, specific water rights administration instructions, directions, or actions relevant to the individual appropriation subject to such closing notice.

DEPARTMENT OF NATURAL RESOURCES

A handwritten signature in blue ink that reads "Thomas E. Riley". The signature is written in a cursive style with a clear, legible font.

December 30, 2022

Thomas E. Riley, P.E., Director